SUPREME COURT OF GEORGIA

Case No. S09D1707 Atlanta, July 28, 2009

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAY PHILLIP GRUND v. TRACEY ANN SPRINKLE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

Hunstein, C.J., Carley, P.J., Benham, Thompson, Hines and Melton, JJ., concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Therese S. Barnes, Clerk.

SUPREME COURT OF GEORGIA
Case No. S09D1707 Atlanta, July 17, 2009

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

JAY PHILLIP GRUND V. TRACEY ANN SPRINKLE

From the Superior Court of Cobb County.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby denied.

Hunstein, C. J., Carley, P. J., Benham, Thompson, Hines and Melton, JJ., concur.
0511005633

Seal:
Supreme Court of the
State of Georgia
1845

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Therese S. Barnes, Clerk.

Court of Appeals
Of the State of Georgia

ATLANTA, June 26, 2009

The Court of Appeals hereby passes the following order:

A09D0396. JAY PHILLIP GRUND v. TRACEY ANN SPRINKLE.

Jay Phillip Grund seeks discretionary review of the denial of his motion to set aside an order modifying his child support obligation set forth in his final divorce decree. Under the Georgia Constitution of 1983, Art. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (330 SE2d 706) (1985). As the underlying subject matter in this case involves child support, this Court lacks jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is *TRANSFERRED* to the Supreme Court of Georgia.

Seal:
COURT OF APPEALS
OF THE STATE OF GEORGIA

1906
Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **June 26 2009**
I certify that the above is a true extract
from the minutes of the Court of Appeals of Georgia
Witness my signature and the seal of
said court hereto affixed the day and year
last above written.
s/ William L. Martin III, Clerk

Filed in Office May-05-2009 13:42:50
ID# 2009-0068281-CV

s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN SPRINKLE,:	
	:
Plaintiff,	: CIVIL ACTION
	: FILE NO.:
v.	: 05-1-10056-33
	:
JAY PHILLIP GRUND,	:
	:Related to CAFN:
Defendant.	: 05-1-10056-33
	:

ORDER ON MOTION TO SET ASIDE JUDGMENT

On the 22nd day of April, 2009, Defendant's Motion to Set Aside Judgment came on for hearing. Plaintiff, TRACEY ANN SPRINKLE, appeared in person by attorney of record, F. Marian Weeks. Defendant, JAY PHILLIP GRUND*, appeared ~~in person and~~ by attorney. The Court, after considering the evidence and argument of counsel, makes the following orders, to-wit:

IT IS ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Set Aside Judgment is hereby DENIED in all things.

SO ORDERED this 1st day of May, 2009.

s/ James Bodiford
HONORABLE JAMES BODIFORD, JUDGE
SUPERIOR COURT OF COBB COUNTY

Prepared by:
s/ F. Marian Weeks
F. Marian Weeks
State Bar of Georgia No. 745675
367 Marietta GA 30060
770-218-2600

* Mr. Grund DID NOT APPEAR. s/ JB

Filed in Office May-05-2009 13:42:50
ID# 2007-0085746-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	:	
	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	FILE NO.05-1-10056-33
TRACEY ANN SPRINKLE,:		
	:	
Defendant.	:	

FINAL ORDER

The above styled matter having come before the Court on its regular calendar as a result of the Plaintiff's Motion to Vacate/ Rehearing the Court's previous Order of June 28, 2006. Both parties were present and represented by counsel, both parties presented argument that was heard by the Court, and as a result it is Ordered as follows:

The Order of this Court in the above styled matter signed February 18, 2007, but file stamped February 19, 2007, nunc pro tunc to June 28, 2006 shall remain in full force and effect, and the Plaintiff's Motion to Vacate/Rehearing of that Order is hereby denied, and the parties are Ordered to abide by that Order.

This 26th day of June, 2007.
Nunc pro tunc to May 2, 2007.

s/ James Bodiford
JAMES G. BODIFORD, Judge
Superior Court of Cobb County

(Signatures Continued on Following Page)

Presented by:
s/ F. Marian Weeks
F. Marian Weeks, Esq.
Attorney for Defendant
State Bar of Georgia No. 745675

367 Atlanta Street
Marietta GA 30060
770-218-2600

Approved as to form:
s/ Douglas Davis, by F. Marian Weeks, with express permission
Douglas Davis, Esq.
State Bar of Georgia No. 207950

Belli, Weil, Grozbean & Davis, LLP
8101 Roswell Road, Suite 200
Atlanta, GA 30350
770-993-3300

Filed In Office Feb-19-2007 14:17:49
ID# 2007-0022927-CV

s/ Jay C. Stephenson
Jay C. Stephenson

Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	
Plaintiff,	CIVIL ACTION FILE NO.:
v.	05-1-10056-33
TRACEY ANN SPRINKLE,	
Defendant.	

FINAL ORDER

Pursuant to the calendaring announcement made in this Court on May 22, 2006, the within and foregoing matter came on for hearing on June 28, 2006, Defendant being present and represented by Carla H. Bright, Esq., Plaintiff not being present, and it appearing that Plaintiff's counsel, Mark O. Shriver, Esq., had duly filed and served his Motion to Withdraw as Counsel of Record for Plaintiff, which is hereby granted instanter, upon consideration of the pleadings, testimony and

evidence presented, the Court hereby **FINDS** and **ORDERS** as follows:

1. Plaintiff's counsel submitted copies of his client's 2003, 2004 and 2005 federal income tax returns to Defendant's counsel as required in this Court's Order dated May 22, 2006.

2. At the time of their divorce in 2000, the parties' Final Judgment and Decree or Divorce required Plaintiff to pay Defendant minimal child support of $896.00 per month (based on his income of $43,000 per year) or 25% of his gross annual income, whichever was greater.

3. (a) Plaintiff's 2003 federal income tax return shows Plaintiff's total income was less than $43,000 and therefore no additional child support is due for 2003.

(b) Plaintiff's 2004 federal income tax return reflected net rental income of $101,494; interest income of $2,131; divided income of $10,101; $6,352 short-term capital gain; and $34,268 long-term capital loss [including $82,009 long term capital loss taken for sale of inherited Merck stock]. Resulting in $167,819 actual income. Plaintiff owes Defendant additional child support for 2004 of $31,204.75.

(c) Plaintiff's 2005 federal income tax return reflected net rental income on Chicago property of $106,912 and net rental income of Cobb County, GA property excluding depreciation of $21,986; interest income of $2,609; divided income of $14,736; $11,907 short-term capital gain; and $188,491 net proceeds received on the sale of Meadow Grove property, resulting in $347,532 actual income. Additional child support owed by Plaintiff to Defendant for 2005 is $76,131.00.

(d) Calculating Plaintiff's January 2006 net rental income (excluding depreciation only), shows his income was $12,909. Additional child support owed to Defendant for January 2006 is $2,331.00.

Defendant-Mother is hereby awarded $109,666.75 additional child support for 1/1/2004 – 1/31/2006 pursuant to the self-escalating child support clause in their divorce decree.

4. Plaintiff's net rental income in 2006 is established as $12,909 per month and average gross income/dividend earnings of $1,232 per month, totaling **$14,141** of income per month. Defendant's net monthly income is **$2,256.** Pursuant to their prior agreement in the above styled action, child support is set at 20% per child. Plaintiff-Father shall pay Defendant-Mother $2,828 per month for Zachary. Defendant-Mother shall pay Plaintiff-Father $246.00 per month child support for Joshua. Child support payments as to each child shall commence on February 1, 2006, and continue on the first day of each month thereafter, until that child reaches the age of 18, dies, marries, or becomes emancipated, whichever first occurs, at which time the child support as to that child shall be terminated. Provided, however, if either child becomes 18 years of age and has not been previously married or emancipated, and is enrolled in and attending an accredited secondary school on a full-time basis, then the support for each such child shall continue until he completes secondary school, provided that such support shall not be required after the child attains 20 years of age. Defendant-Mother's monthly payments to Plaintiff-Father shall be deducted from the child

support she is to receive, resulting in Plaintiff paying the sum of $2,582 per month to Defendant.

5. Plaintiff-Father is found to be in willful contempt for his failure to timely provide Defendant with copies of his 2003, 2004 and 2005 tax returns, his failure to comply with the counseling requirements for the children previously established by this Court, and his failure to provide current insurance identification cards on the children to his ex-wife. Defendant is hereby awarded the sum of $4,775.00 as attorney's fees, to be paid by Plaintiff directly to Browning & Smith, LLC, 31 Atlanta Street, Suite 210, Marietta, GA 30060.

FURTHER ORDERED that the parties shall comply with each and every provision of the within Order and the terms of all other Orders previously entered in any prior litigation between the parties not in conflict herewith.

SO ORDERED, this 18th day of February, 2007, *nunc pro tunc* June 28, 2006.

s/ James Bodiford
JAMES G. BODIFORD, Judge
Cobb County Superior Court

Prepared by:
s/ Carla H. Bright
CARLA H. BRIGHT
Georgia Bar No. 258000
BROWNING & SMITH, LLC
Attorneys for Defendant-Mother
31 Atlanta Street, Suite 201
Marietta, GA 30060
770/424-1500

CERTIFICATE OF SERVICE

This is to certify that I have this date placed a copy of the attached order in the United States Mail to the following:

Carla Bright
31 Atlanta Street
Suite 201
Marietta, Ga. 30060

Mark Shriver
180 Parkway 575
Suite 140
Woodstock, Ga. 30188

Douglas Davis
8010 Roswell Road
Suite 200
Atlanta, Ga. 30350

This the 19th day of February, 2007.

s/ Jan Porter
Jan Porter
Administrative Assistant to
Judge James G. Bodiford

Filed in Office Feb-19-2007 14:13:02
ID# 2007-0022921-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	
Plaintiff,	CIVIL ACTION FILE NO.:
v.	05-1-10056-33
TRACEY ANN SPRINKLE,	
Defendant.	

TEMPORARY ORDER

Defendant's Application for Citation for Contempt and amendment thereto having come on for hearing before the undersigned on May 22, 2006, Plaintiff being present and represented by Mark O. Shriver, Esq., and Defendant being present and represented by Carla H. Bright, Esq., by agreement of the parties, the terms of the settlement read into the record that day and memorialized in the Transcript of Proceedings

attached hereto and incorporated herein as Exhibit "A" are hereby made the Order of this Court.

FURTHER ORDERED that the parties shall comply with each and every provision of the within Temporary Order and the terms of all Orders previously entered in any prior litigation between the parties not in conflict herewith.

SO ORDERED, this 18th day of February, 2007, *nunc pro tunc* May 22, 2006.

s/ James Bodiford
James G. Bodiford, Judge
Cobb Superior Court, C.J.C.

Prepared by and consent to on behalf
of Defendant Mother as announced and
recorded by the Court Reporter in attendance:

s/ Carla H. Bright
CARLA H. BRIGHT
Georgia bar No. 258000
BROWNING & SMITH, LLC
Attorneys for Defendant-Mother
31 Atlanta Street, Suite 201
Marietta, GA 30060
770/424-1500

Filed In Office Jul-10-2006 10:20:31
ID# 2006-0086106-CV
Page 1
s/Jay C. Stephenson
Jay C. Stephenson
Clerk of superior Court of Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION FILE
-versus-	§	
	§	NO. 05-1-10056-33
	§	
TRACEY ANN SPRINKLE,	§	
	§	
Defendant.	§	

ORDER

The Motion to Withdraw as Counsel of Record for the Plaintiff having been presented and duly filed with the Clerk of Superior Court, with proper notice having been given to the Plaintiff and all other requirements of Superior Court Rule 4.3 having been satisfied,

IT IS Hereby ORDERED, that MARK O. SHRIVER, IV shall be withdrawn as attorney of record for the plaintiff in the above of record for the

Plaintiff in the above referenced case. *NUNC PRO TUNC June 22, 06*

SO ORDERED, this 7th day of ~~June~~ (*July*), 2006.

s/ James G. Bodiford

JUDGE, SUPERIOR COURT
OF COBB COUNTY
COBB JUDICIAL CIRCUIT

Prepared & submitted by:

s/ Mark O. Shriver, IV

MARK O. SHRIVER, IV
Georgia Bar No. 644735
SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770) 926-7326

CERTIFICATE OF SERVICE

This is to certify that I have this date placed a copy of the attached order in the United States Mail to the following:

Mark Shriver, IV
301 Creekstone Ridge
Woodstock, Ga. 30188

Carla Bright
31 Atlanta, Street
Suite 201
Marietta, Ga. 30060

This the 10th day of July, 2006

s/ Jan Porter

Jan Porter
Administrative Assistant to
Chief Judge James G.
Bodiford

Filed In Office Jun-22-2006 12:20:44
ID# 2006-0079058-CV
EXHIBIT "B" Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of superior Court of Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND, Plaintiff	)
	)CIVIL ACTION FILE
v.	)
	) NO.:05-1-10056-33
TRACEY ANN SPRINKLE, Defendant.	)

CONSENT TO WITHDRAW

I herby provide MARK O. SHRIVER, IV, Attorney at Law, with my consent to withdraw from the above matter.

I herby waive all notice requirements under Uniform Superior court Rule 4.3, including the usual ten (10) day period in which I can object to Mr. Shriver's withdrawal.

I hereby request the Superior Court judge to immediately release MARK O. SHRIVER, IV and the law firm of SHRIVER & GORDON, P.C. as attorneys of record.

I have been informed by Mr. Shriver that there are presently no court dates ser in this matter.

I understand and realize that I mist immediately inform the Clerk of either my address, if I proceed unrepresented, or the address of my new attorney.

I accept all responsibility for my case from the *19* day of June, 2006, at *12:30* o'clock *P* .M. and forward, and my Consent to Withdrawal is effective from this date and time.

s/ Jay Phillip Grund

JAY PHILLIP GRUND

Sworn to and subscribed
Before me on this 19
day of June, 2006.

s/ Ladonna Hickey

NOTARY PUBLIC
My commission expires:

10/2/09

Filed in Office June-22-2006 12:20:44
ID# 2006-0079056-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN SPRINKLE,:		
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	
-versus-	:	NO.: 05-1-10056-33
	:	
JAY PHILLIP GRUND,	:	
Defendant.	:	

MOTION TO WITHDRAW

COMES NOW MARK O. SHRIVER, IV, Attorney for the Plaintiff in the above referenced action, who files this Motion to Withdraw, as counsel, allowing said attorney to withdraw as counsel for Plaintiff. In support of said motion, the following is shown to this Court:

1.

The undersigned attorney has provided Plaintiff with a copy of this Motion to Withdraw, together with the Notification of Withdrawal of Counsel attached hereto as Exhibit "A", at least ten (10) days prior to submitting notice of this request to the Court.

2.

Plaintiff has provided counsel with his Consent to Withdraw which is attached hereto as Exhibit "B".

3.

Opposing attorney, Carla H. Bright, whose address is 31 Atlanta Street, Suite 201, Marietta, GA 30060, has been given written notice of this Motion.

WHEREFORE, the undersigned attorney requests that an Order be entered allowing him to withdraw as attorney of record for the Plaintiff in the above styled action.

This 19 day of June, 2006.

s/ Mark O. Shriver, IV
MARK O. SHRIVER, IV
Attorney for Plaintiff
Georgia State Bar No. 644735

SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770) 926-7326

Filed in Office June-22-2006 12:20:44
ID# 2006-0079057-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	:
Plaintiff,	: CIVIL ACTION
	:
-versus-	: FILED NO
	: 05-1-10056-33
TRACEY ANN SPRINKLE,	:
Defendant.	:

NOTIFICATION OF WITHDRAWAL OF COUNSEL

COMES NOW MARK O. SHRIVER, Attorney for JAY PHILLIP GRUND, Plaintiff in the above styled action, who has filed his Motion to Withdraw as counsel, and in accordance with Uniform Court Rule 4.3, hereby informs JAY PHILLIP GRUND of the following information.

1.

MARK O. SHRIVER, IV desires to withdraw from representing JAY PHILLIP GRUND in the above styled action. JAY PHILLIP GRUND has consented to MARK O. Shriver, IV withdrawal from representing him in the above styled matter.

2.

The Superior Court of Cobb County will retain jurisdiction of the above styled action.

3.

Plaintiff, **JAY PHILLIP GRUND**, has the burden of keeping the Court informed respecting where notices, pleadings, or other papers may be served.

4.

Plaintiff, **JAY PHILLIP GRUND**, has the obligation to prepare for trial or have other counsel prepare for trial.

5.

If Plaintiff, **JAY PHILLIP GRUND**, fails or refuses to meet these obligations and burdens, he may suffer adverse consequences.

6.

Plaintiff, **JAY PHILLIP GRUND**, is hereby notified that there are presently no court dates set in this matter.

7.

The dates of any scheduled proceedings, including trial, and the holding of such proceedings will not be affected by the withdrawal of MARK O. SHRIVER, IV as attorney for Plaintiff.

8.

The service of notices may be made upon Plaintiff, **JAY PHILLIP GRUND**, at the last known address which is 4162 McClesky Road, Marietta, GA 30066.

9.

Plaintiff, **JAY PHILLIP GRUND**, has ten (10) days from the date of this notice to file any objection to the withdrawal of MARK O. SHRIVER, IV with the Superior Court of Cobb County, and serve said objection upon the attorney whose address is shown below.

This 19 day of June, 2006.

s/ Mark O. Shriver, IV
MARK O. SHRIVER, IV
Attorney for Plaintiff
Georgia Bar No. 6744735

SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770)926-7326

Filed in Office Oct-02-2000 09:24am
COBB COUNTY GA.
ID# 2000-0103219-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN GRUND,	)
Plaintiff	)
	)CIVIL ACTION
v.	)
	)FILE NO.: 99-1-7729-33
JAY PHILLIP GRUND,	)
Defendant.	)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 29th day of September, 2000, by and between TRACEY ANN GRUND, hereinafter referred to as the Wife, and JAY PHILLIP GRUND, hereinafter referred to as the Husband.

WITNESSETH

WHEREAS, the said parties are Husband and Wife; and

WHEREAS, the said parties are living in a *bona fide* state of separation, having separated on or about September 25, 1999;

WHEREAS, the Wife has or will file in the Superior Court of Cobb County, Georgia, a Complaint for Divorce under the above style; and;

WHEREAS, the parties have defined their respective rights and obligations with respect to custody and visitation of their minor Children, alimony, child support and a division of their assets and so forth;

NOW, THEREFORE, in consideration of these premises, and the mutual promises and covenants hereinafter made, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do covenant and agree as follows:

1. **CONSIDERATION.** The consideration of this Agreement is the benefits flowing to each other by virtue hereof and the mutual promises and agreements contained herein. The adequacy of the consideration for the agreements contained herein is expressly stipulated and admitted by the parties.

2. **EQUITABLE DIVISION OF PROPERTY.** The parties hereto agree that the transfers of property are pursuant to a division of the equitable interest in such property and said transfers are not in settlement of any alimony or marital property rights. The division of the liquid assets, personal property and real property, are all in the nature of a property settlement. It is the intent of the parties that the division of the liquid assets and personal property are divided on an equal basis. It is specifically the intent of the parties that the division of said property is not to result in a taxable event to either the Husband or the Wife and said division is not to be treated by the Internal Revenue Service as alimony, but only as property division.

It is specifically acknowledged and agreed that the parties hereto have amicably divided the household furniture, furnishings and assets acquired during the marriage of the parties.

The wife shall have full title, possession, and use of the marital residence, also known as 4109 Barbara Drive, Marietta, Cobb County, Georgia. The Husband agrees to execute and deliver to the Wife a Quitclaim Deed for the marital home place at or before the final decree of divorce is granted.

The Husband shall have full title, possession, and use of the residence at 4162 McClesky Drive, Marietta, Cobb County, Georgia.

Each party does hereby quitclaim and convey all of his or her right, title and interest to and in such property now in the possession of the other party.

The Husband shall provide the Wife with the title to the 1984 Plymouth Voyager automobile which is in her possession, and the Wife shall have all right, title and interest in and to the 1984 Plymouth Voyager, and shall be responsible for the maintenance and upkeep thereon.

The Husband shall have all right, title and interest in and to the 1988 Plymouth Horizon automobile and shall be responsible for the maintenance and upkeep thereon.

Unless otherwise expressly set forth herein the title to such property shall vest in the respective party, subject to any indebtedness owed thereon and the respective party shall indemnify and hold the other party harmless from said indebtedness.

3. **LEGAL CUSTODY AND CONTROL OF THE MINOR CHILDREN**. The parties shall have joint legal custody of the minor children, and shall confer in good faith on all matters of importance

pertaining to the education, religious training, and medical care of the minor Children as follows:

(a) Except as agreed otherwise, after good faith consultation, the Children shall be exposed to religious beliefs and practices of both parents and shall be entitled to attend religious ceremonies and events of either at times when in the when in the physical custody of either. Furthermore, the Court encourages each parent to allow the Children to accompany the other parent to special events of religious significance even when the Children would not otherwise be in the physical custody of that parent;

(b) In the case of a medical emergency, the party who has the Children at the time of the emergency may determine the treatment needed and shall notify the other party as soon as possible, but in cases within six (6) hours. As to non-emergency medical care and major educational decisions, if good faith consultation does not result in decision by agreement, the primary physical custodian shall have the ultimate decision making authority;

(c) Each party shall be entitled to complete, detailed information from any pediatrician, general or other physician, dentist, psychiatrist, psychologist, consultant, or other specialist, hospital or other medical facility attending or who has at any time attended the Children for any reason whatsoever and to be furnished with copies of any reports, including reports given by them, or any of them, to the other parent;

(d) Each party shall be entitled to complete, detailed information from any teacher or school giving instructions to the Children, or from any school the Children may attend, and to be furnished with copies of all reports given by them

to the other parent, inclusive of school calendar and activity information;

(e) It is intended that by exhibiting this provision of this Final Judgment and Decree that each parent shall be entitled to gain access to all medical and school records.

4. **PHYSICAL CUSTODY OF THE MINOR CHILDREN.** The Wife shall have both temporary and permanent physical custody of the minor Children of the parties, to-wit: JOSHUA PHILLIP GRUND, born October 26, 1991 and ZACHARY JOSEPH GRUND, born August 8, 1994. The permanent physical custody vested in the Wife shall be subject to reasonable visitation rights of the Husband as hereinafter set forth.

5. **VISITATION SCHEDULE.** The Husband may visit with the Children at any reasonable time and for such periods of time as the Wife and Husband shall Mutually Agree upon, provided however, the Husband gives the Wife twenty-four (24) hours advance notice of intent to exercise said visitation. The parties have agreed to visitation every other weekend, one day visit out of the week following the weekend visitation, and the parties shall share birthdays, holidays and vacations. In the event a dispute arises or the parties hereto are unable to agree with respect to visitation, then the following schedule shall control:

(a) The Husband shall have the right to have the minor Children visit away from the home of the Wife every 2nd and 4th weekend of each month from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. This paragraph shall be interpreted subject to subparagraphs c, d, e, f, g, h, i, j, k, l, m, and n,: to wit, if a holiday falls on the weekend visitation the holiday visitation schedule prevails;

(b) The Husband shall have the right to have the minor Children visit during the summer school vacation for a period of four (4) weeks. Said weeks may be successive or, depending upon agreement between the parties, may be split. In the event the summer visitation consists of four (4) successive weeks, the Wife shall have the right to visit with said Children during said four (4) week period from 6:00 p.m. on Friday until 6:00 p.m. on Sunday on the weekends following the first and third weeks of said summer visitation. The Husband shall give the Wife at least four (4) weeks advance notice of intent to exercise said summer visitation;

(c) The Husband shall be entitled to have the minor Children visit with the Husband from 6:00 p.m. on the Friday immediately preceeding Father's Day until 9:00 p.m. on Father's Day each year, notwithstanding any other visitation rights set forth herein. Said minor Children shall remain with the wife for the weekend of Mother's Day each year, notwithstanding any other visitation rights set forth herein;

(d) The Husband shall have the right to have the minor Children visit on odd-numbered years from 6:00 p.m. on Wednesday immediately preceeding Thanksgiving until 6:00 p.m. on Sunday immediately following Thanksgiving. The Wife shall have the right to have the minor Children on even-numbered years from 6:00 p.m. on Wednesday immediately preceding Thanksgiving until 6:00 p.m. on Sunday immediately following Thanksgiving;

(e) The Husband shall have the right to have the minor Children visit on the following major holidays on even-numbered years: President's Day, Easter, July 4th and Veteran's Day. The Husband

shall be entitled to the minor Children on odd-numbered years on the following major holidays: Martin Luther King, Jr., Memorial Day and Labor Day. Visitation shall begin at 6:00 p.m. the day preceding said holiday until 7:00 p.m. the day of said holiday. In the event the holidays are on a Monday, visitation shall begin at 6:00 p.m. the Friday preceding the holiday until 7:00 p.m. the day of the holiday, notwithstanding any other visitation rights set forth herein. The Wife shall be entitled to the Children on the alternate years on the above-referenced holidays, notwithstanding any other visitation rights set forth herein;

(f) The Husband shall have the right to have the minor Children visit on odd-numbered years from 6:00 p.m. on December 18th until 1:00 p.m. on December 25th, and on even-numbered years from 1:00 p.m. on December 25th until 6:00 p.m. on January 2nd;

(g) The Husband shall have the right to have the minor Children visit on even-numbered years from 6:00 p.m. on Friday immediately preceding spring break vacation (according to the school break) until 6:00 p.m. on Friday immediately preceding spring break vacation (according to the school break) until 6:00 p.m. on Sunday prior to the commencement of school;

(h) The Husband shall have the right to telephone visitation on Tuesday of each week, commencing between 7:30 p.m. and 8:00 p.m. The Wife shall have the same right should visitation extend over a one-week period;

(i) Husband and Wife agree to engage in no illegal or immoral behavior while either has custody of the minor children. Neither party will allow a member of the opposite sex (not related to

the party) to remain in the home past midnight while the minor children is or are in their custody.

(j) The above-mentioned visitation shall in no way interfere with the Children's school schedule without the mutual consent of both the Husband and the Wife;

(k) The Husband shall notify the Wife before noon on Thursday preceding all weekends that visitation rights shall be exercised. The Wife agrees to have the Children ready at the time designated in the notification. In the even the Husband cannot exercise planned visitation, the parent will be notified immediately;

(l) Both parties recognize that it is in the best interest of the Children that the visitation periods remain flexible in order to allow the children to participate in planned events, such as athletic events, school activities or other similar participatory activities, and the parties agree that the Husband's rights of visitation set forth herein may be amended and modified to suit the particular needs and circumstances of the parties and/or the Children;

(m) The Husband shall be responsible for arrangements to pick up the minor Children for the commencement and conclusion of each visitation period;

(n) Both parties acknowledge that they understand the term "week" to mean seven calendar days.

6. **ENUNCIATION OF PARENTAL RIGHTS AND OBLIGATIONS.**

(a) The parties acknowledge that this Settlement Agreement cannot provide for every possible contingency with respect to visitation of the Children. In this regard, the parties agree to

cooperate and consult with one another so as to allow the Husband to visit with the Children as often as possible;

(b) The parties shall refrain from committing any act of harassment toward one another, and shall at all times conduct themselves in a manner of peace and tranquility toward on another. The parties shall further refrain from any conduct intended to degrade the other party while in the presence of the Children;

(c) Each party shall at all times keep the other informed of his or her place of residence, his or her place of employment, and his or her home phone number and work phone number, and shall promptly notify the other of any change should it occur;

(d) The no-custodial parent will not remove the Children from the State of Georgia without the express written consent and permission of the other party;

(e) Neither party shall attempt to influence the Children not to love or respect the other parent, nor shall they encourage or allow any third person to influence the Children not to love or respect the other parent;

(f) Each party shall keep the other informed as to the health and location of the Children, including an address and phone number where the Children may be reached, while the Children are in that party's custody.

7. **CHILD SUPPORT**

(a) The parties hereto do acknowledge that the divorce decree to be rendered by the Court in this proceeding shall be subject to the requirements of O.C.G.A. § 19-5-12. Based upon O.C.G.A. § 19-5-12, the parties hereto do expressly agree:

1. The gross income of the father is $43,000.10 per year;

2. The gross income of the mother is $0.00 dollars per year;

3. In this case, child support is being determined for two (2) Children;

4. The applicable percentage of gross income to be considered is:

Number of Children	**Percentage Range of Gross Income**
2	23% to 28%

Thus twenty-five (25%) percent of $43,000.10 equals $896.00 dollars per month;

6. The parties further show that being considered as a part of the percentage awarded for child support is the existence of the following special circumstances

_____1. Age(s) of the Children

_____2. A child's extraordinary medical costs of needs in addition to accident and sickness insurance, provided that all such costs or needs shall considered if no insurance is available.

_____3. Educational Costs

_____4. Day-care costs

_____5. Shared physical custody arrangements, including extended visitation

_____6. A party's other support obligations to another household

_____7. Income that should be imputed to a party because of suppression of income

_____8. In-kind income for the self-employed, such as reimbursed meals or a company car

_____9. Other support a party is providing or will be providing, such as payment of a mortgage

_____10. A party's own extraordinary needs, such as medical expenses

_____11. Extreme economic circumstances including but not limited to:

(a) Unusually high debt structure; or

(b) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum.

_____12. Historical spending in the family for children which varies significantly from the percentage table

_____13. Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact.

_____14. In-kind contribution of either parent

_____15. The income of the custodial parent

_____16. The cost of accident and sickness insurance coverage for dependent children included in the order

_____17. Extraordinary travel expenses to exercise visitation or shared physical custody

_____18. Any other factor which the trier of fact deems to be required by the ends of justice, as described below:

7. Having found that no special circumstances exist, the final award of child

support which the Husband shall pay to the Wife for support of the minor children is $896.00 dollars per month, $448.00 per child, beginning on the 1st day of October, 2000, until each child becomes 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until each child completes secondary school, provided that such support shall not be required after each child completes secondary school, provided that such support shall not be required after each child attains 20 years of age. The Husband is ordered to provide accident, sickness and dental insurance for the minor Children for so long as he is obligated by this Order to provide support. Husband shall be responsible for and shall reimburse Wife one-half of any amounts not covered by medical insurance, including one-half of any co-payments and one-half of any amounts not reimbursed to Wife.

(b) Whenever in violation of this Order there is a failure to make the support payments due hereunder so that the unpaid amount equals or exceeds the amount payable for one month, the payments required to be made may be collected by the process of continuing garnishment for support;

(c) The parties agree that the Wife shall be entitled to the dependency exemption allowable under Section 151(e) of the Internal Revenue Code on federal and state income tax returns for the minor children;

(d) The non-custodial parent shall provide to the custodial parent copies of W-2 and tax returns on or before May 15 of each year or no later than 30 days from the date said return was filed, which ever is earlier. Said obligation under this paragraph

terminates when the obligation for child support terminates;

(e) It is further agreed that child support shall equal twenty-five (25%) of the Husband's gross income. Said amount shall be determined based upon a yearly review of the Husband's W-2's on February 15 of each year. Said support shall not be less than $896.00 per month;

(f) Each party shall provide the other party with the name, address of employment. If employment changes at any time, this information shall be provided to the other party within two weeks of change of employment.

(g) The Husband and Wife shall each be responsible for one-half of the college or trade school expenses for the minor children of the parties.

8. **INCOME DEDUCTION.** The parties acknowledge that the divorce decree to be rendered by the Court in this proceeding shall be subject to the requirements of O.C.G.A. § 19-6-32 (a.1) and that such decree shall provide for the immediate withholding of child support ordered by said decree unless:

1. The Court finds that there is good cause not to require such immediate withholding; or
2. This agreement provides for an alternative arrangement.

Based upon the parties knowledge of the wage-withholding of child support payments provided hereby from the wages of the parent required to pay child support hereunder.

9. **LIFE INSURANCE.** The Husband shall maintain in effect an insurance policy on his respective life in the amount of $150,000, with each child designated as beneficiary of $75,000 of said

policy. Wife shall be named as trustee for the minor Children and said party shall have full discretion for the use of all trust funds without applying to any court and without being required to file returns to any court whatsoever and without giving bond, and when received on behalf of such minor Children shall be in full satisfaction and settlement of all obligation for support of the minor Children by his or her estate after that party's death.

10. **HEALTH INSURANCE.** The Husband shall maintain in effect a policy of major medical dental and hospitalization insurance cover on the minor Children comparable to the present policy maintained by Husband's employer. The Husband shall pay all medical expenses not covered up to $20.00 co-payment per visit. Anything over $20.00 the Husband and Wife shall equally divide any medical, dental, orthodontia or prescription drug expenses not covered by said insurance coverage. The parties shall cooperate with one another in the submission of claim forms to the insurance company. In the event the Husband's employer does not offer such health insurance of if such insurance is at cost to the Husband, the parties shall equally contribute to said cost.

11. **ALIMONY**. The Husband shall pay to the Wife as alimony the sum of $450.00 per month beginning on the 1st day of October, 2000, and continuing for one (1) year or until the Wife remarries or dies.

12. **DEBTS OF THE PARTIES**. The parties agree that the Husband shall be responsible for all debts if the parties, with the exception of the Wife's one (1) VISA credit card, and she shall be responsible for the payment of any and all debt incurred on her card.

Except as provided for in this Agreement, the Husband and Wife shall not any time hereafter contract any debts, obligation or other liabilities whatsoever for which the other for his or her property or estate shall become of may become liable or answerable. The Husband and Wife shall deliver unto each other any credit cards in their possession for any charge accounts maintained in the other's name. In the event that there is a joint charge account, the cards shall be destroyed and the agreement with the organization or company providing credit shall be voided upon the execution of the within agreement. If new cards are inadvertently delivered and charges made upon said cards, the individual making such charges shall be absolutely responsible for payments of any debts.

If legal action is brought against one party to recover any debt of the other party, the parties agree to indemnify and hold the other party harmless and in addition to pay all attorney's fees and costs of collection which they may incur as a result of such liability.

13. **STOCK OPTIONS.** Husband has at least 5,174 stock options for the purchase of stock through his employment with The Home Depot. Wife shall receive as an equitable division of property below:

Property: The Home Depot options as follows:

1. 243 options granted 2/21/97 at an option price of $17.0000, vested 2/21/00, expiration 2/20/07 (including any split in shares).
2. 1,000 options granted 11/13/97 at an option price of $27.2500, vested

11/13/00, expiration 11/12/07 (including any split in shares).

3. 300 options granted 02/27/98, at an option price of $31.9375, vested 2/27/00, expiration 2/26/08 (including any split in shares).

Husband and Wife acknowledge that Wife shall be bound by all terms and condition and restrictions associated with said stock option by The Home Depot.

Wife shall have the right to determine when she wishes to exercise said options subject to the restrictions that both parties will be under by Husband's employer. Upon the Wife determining that she wishes to exercise her options, the Husband shall exercise the same in a timely fashion.

Husband and Wife acknowledge that the exercise of said options and sales of stock may be required to be in the Husband's name.

Husband shall retain, free and clear of any claim of the Wife as an equitable division of property the remaining stock options in the Home depot, 3,631 options.

14. **401K.** Husband shall transfer to the Wife the sum of Eight Thousand ($8,000.00) Dollars from his 401K account through his employers, The Home Depot. Husband shall have prepared a Qualified Domestic Relations Order so as to carry out this transfer. Husband shall retain the balance remaining in said account. This Court reserves jurisdiction to enter a subsequent Qualified Domestic Relations Order so as to carry out the intentions of this provision.

15. **FUTURE OBLIGATIONS OF THE PARTIES.** The Husband and Wife warrant,

represent and agree that they will not hereafter contract or incur any debt, charge, or liability whatsoever in the other's name or for which the other, their legal representative or their property or estate, will or may become liable. The Husband and Wife further covenant at all times to hold the other free, harmless and indemnified from and against all debts, charges and liabilities hereafter contracted or incurred by the other in breach of the provision of this paragraph.

16. **SEPARATION**. It shall be lawful for each party, at all times hereinafter, to live separate and apart from the other at such place or places as he or she may choose.

17. **INTERFERENCE.** Both parties further agree that they shall refrain from any type of harassment or abuse toward each other and to conduct themselves in a manner of peace and tranquility toward each other.

18. **INCORPORATION**. It is expressly understood that this Agreement does not obligate the parties to continue to live in a state of separation or to proceed with an action for divorce. However, in the event that either party shall bring or maintain an action for dissolution of the marital relationship, or for separate maintenance, this Agreement shall be presented to the Court and incorporated by reference into any judgment or decree concerning the matters provided herein. Notwithstanding such incorporation, this Agreement shall survive and be in force independently of any judgment or decree.

19. **STATE AND FEDERAL TAX RETURNS.** The parties agree to file separate federal and state tax returns for the tax year 2000. In the even that an audit occurs for a year in which the parties filed

a joint return, the Husband shall be responsible for any taxes, fees, and/or penalties owed in an amount equal to the ratio of that party's income as stated on the W-2 and any other income attributable to that party. In addition, the parties agree to divide the cost of an accountant and/or attorney hired in conjunction with a problem resulting from a jointly filed return according to the same formula.

20. **MERGER.** This Agreement contains the entire agreement between the parties and any and all verbal understandings or agreement previously entered into are considered merged into this written memorial.

21. **MODIFICATION.** No modification or waiver of any of the terms hereof shall be valid unless in writing signed by both parties. Both parties further agree that this Agreement and contract may be modified as provided by law.

22. **BINDING EFFECT.** In the event that any part of this Agreement shall be held invalid, such invalidity shall not invalidate the whole agreement, but the remaining provisions of this Agreement shall continue to be valid and binding to the extent that such provisions continue to reflect fairly the intent and understanding of the parties in executing this Agreement.

23. **RELEASE.** The Husband and Wife mutually release and forever discharge each other and their attorneys and representatives in this matter from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which either of them has or ever had or will have, upon or by reason of any matter, cause or thing up to the date of this Agreement, including, but not limited to, claims against each other's property, it being the intention

of the parties that henceforth there shall exist as between them only such rights and obligations as are specifically provided for in this Agreement.

24. **MUTUAL COOPERATION.** The parties hereto specifically acknowledge and agree that they shall cooperate in the execution of any and all document necessary and required to perform and transact and perfect the within Agreement and to do and perform all duties and acts necessary to transfer and divide any of the assets in furtherance and compliance with, and performance of, the provisions, agreements and conditions set forth herein.

25. **REPRESENTATION.** The parties hereto acknowledge that they are entering into this Agreement freely and voluntarily; that they have been advised that they are each entitled to separate legal counsel; that all of the provisions hereof, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; that each has had ample opportunity to reach this Agreement before signing same; that the provisions herein contained are fair, reasonable and adequate; and that they clearly understand and consent to all the provisions hereof.

It is recognized between the parties that Joan P. Davis is the attorney for Wife and William B. Herndon is the attorney for the Husband.

26. **FULL DISCLOSURE.** It is hereby specifically acknowledged and agreed by the parties hereto that each has voluntarily entered into the within Agreement based upon the full disclosure by each, the manifestations of such disclosure being reflected in the terms and content of the within Agreement. Both the Husband and Wife specifically affirm and swear that the assets and property

referred to in the within Agreement are the entire assets and estate of the parties. It is further acknowledged and agreed that each party has relied upon the full disclosure by the other with regard to the entire assets and estate of the parties, and that said reliance shall be deemed additional consideration for entering in the within Agreement by both parties. In the event it is discovered that the entire assets and estate of the parties have not been disclosed as set forth herein, then it is specifically acknowledged and agreed that the consideration for this Agreement shall have failed based upon the fraud or mistake of either party and the other shall be entitled to relief from this Agreement and any Decree into which this Agreement is incorporated. Such relief shall be available to the Husband or Wife, as the case may be, under the laws and statutes of the State of Georgia, whether in law, equity or both, and by consent of the other party.

27. **SURVIVABILITY OF AGREEMENT** In the event of either party's death prior to the time at which all for the obligation imposed upon that party are satisfied, the within Agreement becomes equally binding on that party's executor, administrator, or representative of the estate and to the same extent and for the same purposes. Said executor, administrator or personal representative of the estate shall fulfill all the obligations of this contract and agreement until complete termination thereof prior to the distribution of any part of the estate to any other parties.

This Agreement shall be binding on the heirs and assigns of the parties hereto.

28. **VOLUNTARINESS**. Subject to the foregoing provisions, the parties acknowledge that

they are entering into this Agreement freely and voluntarily and that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein. They have sought and obtained legal advice independently of each other and have been fully advised of their respective legal rights. They further acknowledge that all of the provisions hereof, as well as all questions pertaining thereto, have been fully and satisfactorily explained to them and that they have given due consideration to such provisions in question and that they clearly understand and consent to all provisions hereof.

29. **ENUNCIATION OF CERTAIN RIGHTS**. Except as provided herein, the Husband and Wife each hereby waive any right at law or in equity to elect to take against any Last Will made by the other, including all rights of dower or of curtesy, and hereby waives, renounces and relinquishes unto the other, their respective heirs, executors, administrators and assigns, forever, all and every interest of any or character which either may now have or may hereafter acquire in or to any real or personal property of the other, whether now owned or hereafter acquired by either. The Husband and Wife shall each have the right to dispose of his or her property by will or otherwise, in such manner as each may in his or her controlled discretion deem proper, and neither one will claim any interest in the state of the other except to enforce any obligation imposed by this Agreement.

The Husband and Wife agree to accept the provisions made for them in this Agreement and the other undertakings of the other as set forth in this Agreement in full satisfaction and discharge of

all claims, past and present, which they may have upon the other.

30. **ATTORNEY'S FEES** The Husband shall pay the sum of $1,500.00 to Joan P. Davis as and for the Wife's attorney fees in this matter.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals.

s/TRACEY ANN GRUND
TRACEY ANN GRUND

Sworn to and subscribed
before me this 9th day of
September, 2000.

s/ J. Bjork
NOTARY PUBLIC
Notary Public, Cobb County
Georgia, My Commission
Expires October 20, 2000

s/JAY PHILLIP GRUND
JAY PHILLIP GRUND

Sworn to and subscribed
before me this 29th day of
September, 2000.

s/ Ruth C. Herndon
NOTARY PUBLIC
Comm. Exp 8-29-2003